

AMENDED IN SENATE APRIL 30, 2014

**SENATE BILL**

**No. 1384**

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**Introduced by Senator Mitchell**

February 21, 2014

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An act to amend Sections 1337.9 and 1338.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1384, as amended, Mitchell. Certified nurse assistants.

Existing law provides for the certification of nurse assistants by the State Department of Public Health. Existing law authorizes the department to deny an application for, initiate an action to suspend or revoke a certificate for, or deny a training and examination application for a nurse assistant under specified circumstances. Existing law requires, with some exceptions, the department to deny a training and examination application and deny, suspend, or revoke a certificate if the applicant or certificate holder has been convicted of a violation of or attempted violation of one ~~of~~ or more specified crimes.

This bill would delete the requirement that the department deny a training and examination application and deny, suspend, or revoke a certificate if the applicant or certificate holder has been convicted of a violation or attempted violation of one or more of the specified crimes. *The bill would, for purposes of determining eligibility for certification or continued certification, establish a rebuttable presumption of sufficient rehabilitation with respect to a conviction of a crime substantially related to the qualifications, functions, and duties of a certified nurse assistant.* The bill would make other related and conforming changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1337.9 of the Health and Safety Code is  
2     amended to read:  
3     1337.9. (a) The state department may deny an application for,  
4     initiate an action to suspend or revoke a certificate for, or deny a  
5     training and examination application for, a nurse assistant for any  
6     of the following:  
7     (1) Unprofessional conduct, including, but not limited to,  
8     incompetence, gross negligence, unless due to circumstances  
9     beyond the nurse assistant's control, physical, mental, or verbal  
10    abuse of patients, or misappropriation of property of patients or  
11    others.  
12    (2) Conviction of a crime substantially related to the  
13    qualifications, functions, and duties of a certified nurse assistant  
14    if the state department determines that the applicant or certificate  
15    holder has not adequately demonstrated that he or she has been  
16    rehabilitated and will present a threat to the health, safety, or  
17    welfare of patients. ~~For purposes of this paragraph,~~  
18    (A) *Subject to subparagraph (B), completion of both of the*  
19    *following establishes a presumption of sufficient rehabilitation:*  
20    *rehabilitation for purposes of this paragraph:*  
21    ~~(A)~~  
22    (i) Any probation, mandatory supervision, or parole, if  
23    applicable.  
24    ~~(B)~~  
25    (ii) After final discharge or release from any term of  
26    imprisonment the elapse of three years without a subsequent  
27    conviction.  
28    (B) *Notwithstanding a presumption established under*  
29    *subparagraph (A), the state department may rebut the presumption*  
30    *if the state department determines that the nature and*  
31    *circumstances of the crime under consideration were so egregious*  
32    *that it would be unreasonable to conclude that the applicant or*  
33    *certificate holder no longer presents a threat to the health, safety,*  
34    *or welfare of patients.*

1 (3) Conviction for, or use of, any controlled substance as defined  
2 in Division 10 (commencing with Section 11000), or any dangerous  
3 drug, as defined in Section 4022 of the Business and Professions  
4 Code, or alcoholic beverages, to an extent or in a manner dangerous  
5 or injurious to the certified nurse assistant, any other person, or  
6 the public, to the extent that this use would impair the ability to  
7 conduct, with safety to the public, the practice authorized by a  
8 certificate.

9 (4) Procuring a certified nurse assistant certificate by fraud or  
10 misrepresentation or mistake.

11 (5) Making or giving any false statement or information in  
12 conjunction with the application for issuance of a nurse assistant  
13 certificate or training and examination application.

14 (6) Impersonating any applicant, or acting as proxy for an  
15 applicant, in any examination required under this article for the  
16 issuance of a certificate.

17 (7) Impersonating another certified nurse assistant, a licensed  
18 vocational nurse, or a registered nurse, or permitting or allowing  
19 another person to use a certificate for the purpose of providing  
20 nursing services.

21 (8) Violating or attempting to violate, directly or indirectly, or  
22 assisting in or abetting the violating of, or conspiring to violate  
23 any provision or term of, this article.

24 (b) In determining whether or not to deny the application for  
25 licensure or renewal pursuant to paragraph (2) of subdivision (a),  
26 the department shall take into consideration the following factors  
27 as evidence of good character and rehabilitation:

28 (1) The nature and seriousness of the conduct or crime under  
29 consideration and its relationship to their employment duties and  
30 responsibilities.

31 (2) Activities since conviction, including employment or  
32 participation in therapy or education, that would indicate changed  
33 behavior.

34 (3) The period of time that has elapsed since the commission  
35 of the conduct or offense referred to in paragraph (1) or (2) and  
36 the number of offenses.

37 (4) The extent to which the person has complied with any terms  
38 of parole, probation, restitution, or any other sanction lawfully  
39 imposed against the person.

1 (5) Any rehabilitation evidence, including character references,  
2 submitted by the person.

3 (6) Employment history and current employer recommendations.

4 (7) Circumstances surrounding the commission of the offense  
5 that would demonstrate the unlikelihood of repetition.

6 (8) An order from a superior court pursuant to Section 1203.4,  
7 1203.4a, or 1203.41 of the Penal Code.

8 (9) The granting by the Governor of a full and unconditional  
9 pardon.

10 (10) A certificate of rehabilitation from a superior court.

11 (c) When the state department determines that a certificate shall  
12 be suspended, the state department shall specify the period of actual  
13 suspension. The state department may stay the suspension and  
14 place the certificate holder on probation with specified conditions  
15 for a period not to exceed two years. If the state department  
16 determines that probation is the appropriate action, the certificate  
17 holder shall be notified that in lieu of the state department  
18 proceeding with a formal action to suspend the certification and  
19 in lieu of an appeal pursuant to subdivision (f), the certificate holder  
20 may request to enter into a diversion program agreement. A  
21 diversion program agreement shall specify terms and conditions  
22 related to matters, including, but not limited to, work performance,  
23 rehabilitation, training, counseling, progress reports, and treatment  
24 programs. If a certificate holder successfully completes a diversion  
25 program, no action shall be taken upon the allegations that were  
26 the basis for the diversion agreement. Upon failure of the certificate  
27 holder to comply with the terms and conditions of an agreement,  
28 the state department may proceed with a formal action to suspend  
29 or revoke the certification.

30 (d) A plea or verdict of guilty, or a conviction following a plea  
31 of nolo contendere shall be deemed a conviction within the  
32 meaning of this article. The state department may deny an  
33 application or deny, suspend, or revoke a certification based on a  
34 conviction as provided in this article when the judgment of  
35 conviction is entered or when an order granting probation is made  
36 suspending the imposition of sentence.

37 (e) Upon determination to deny an application or deny, revoke,  
38 or suspend a certificate, the state department shall notify the  
39 applicant or certificate holder in writing by certified mail of all of  
40 the following:

1 (1) The reasons for the determination.

2 (2) The applicant's or certificate holder's right to appeal the  
3 ~~determination.~~ *determination.*

4 (f) (1) Upon written notification that the state department has  
5 determined that an application shall be denied or a certificate shall  
6 be denied, suspended, or revoked, the applicant or certificate holder  
7 may request an administrative hearing by submitting a written  
8 request to the state department within 20 business days of receipt  
9 of the written notification. Upon receipt of a written request, the  
10 state department shall hold an administrative hearing pursuant to  
11 the procedures specified in Section 100171, except where those  
12 procedures are inconsistent with this section.

13 (2) A hearing under this section shall be conducted within 60  
14 days of the receipt of the written request of the applicant or  
15 certificate holder submitted pursuant to paragraph (1) by a hearing  
16 officer or administrative law judge designated by the director at a  
17 location, other than the work facility, convenient to the applicant  
18 or certificate holder unless the applicant or certificate holder agrees  
19 to an extension. The hearing shall be tape recorded and a written  
20 decision shall be sent by certified mail to the applicant or certificate  
21 holder within 30 calendar days of the hearing. Except as specified  
22 in subdivision (g), the effective date of an action to revoke or  
23 suspend a certificate shall be specified in the written decision, or  
24 if no administrative hearing is timely requested, the effective date  
25 shall be 21 business days from written notification of the  
26 department's determination to revoke or suspend.

27 (g) The state department may revoke or suspend a certificate  
28 prior to any hearing when immediate action is necessary in the  
29 judgment of the director to protect the public welfare. Notice of  
30 this action, including a statement of the necessity of immediate  
31 action to protect the public welfare, shall be sent in accordance  
32 with subdivision (e). If the certificate holder requests an  
33 administrative hearing pursuant to subdivision (f), the state  
34 department shall hold the administrative hearing as soon as possible  
35 but not later than 30 calendar days from receipt of the request for  
36 a hearing. A written hearing decision upholding or setting aside  
37 the action shall be sent by certified mail to the certificate holder  
38 within 30 calendar days of the hearing.

39 (h) Upon the expiration of the term of suspension, he or she  
40 shall be reinstated by the state department and shall be entitled to

1 resume practice unless it is established to the satisfaction of the  
2 state department that the person has practiced as a certified nurse  
3 assistant in this state during the term of suspension. In this event,  
4 the state department shall revoke the person's certificate.

5 (i) Upon a determination to deny an application or deny, revoke,  
6 or suspend a certificate, the state department shall notify the  
7 employer of the applicant and certificate holder in writing of that  
8 determination, and whether the determination is final, or whether  
9 a hearing is pending relating to this determination. If a licensee or  
10 facility is required to deny employment or terminate employment  
11 of the employee based upon notice from the state that the employee  
12 is determined to be unsuitable for employment under this section,  
13 the licensee or facility shall not incur criminal, civil, unemployment  
14 insurance, workers' compensation, or administrative liability as a  
15 result of that denial or termination.

16 SEC. 2. Section 1338.5 of the Health and Safety Code is  
17 amended to read:

18 1338.5. (a) (1) (A) A criminal record clearance shall be  
19 conducted for all nurse assistants by the submission of fingerprint  
20 images and related information to the state department for  
21 processing at the Department of Justice. The licensing and  
22 certification program shall issue an All Facilities Letter (AFL) to  
23 facility licensees when both of the following criteria are met:

24 (i) The program receives, within three business days, 95 percent  
25 of its total responses indicating no evidence of recorded criminal  
26 information from the Department of Justice.

27 (ii) The program processes 95 percent of its total responses  
28 requiring disqualification in accordance with *subparagraph (C)*  
29 *of* paragraph (2) of subdivision ~~(e)~~ (a) of Section 1337.9, as that  
30 section read on January 1, 2014, no later than 45 days after the  
31 date that the report is received from the Department of Justice.

32 (B) After the AFL is issued, licensees shall not allow nurse  
33 assistant trainees or newly hired nurse assistants to have direct  
34 contact with clients or residents of the facility prior to completion  
35 of the criminal record clearance. A criminal record clearance shall  
36 be complete when the department has obtained the person's  
37 criminal offender record information search response information  
38 from the Department of Justice and has determined that the person  
39 is not disqualified from engaging in the activity for which clearance  
40 is required. Notwithstanding any other provision of law, the

1 department may, without taking regulatory action pursuant to  
2 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
3 3 of Title 2 of the Government Code, implement, interpret, or make  
4 specific this paragraph by means of an AFL or similar instruction.  
5 The fee to cover the processing costs of the Department of Justice,  
6 not including the costs associated with capturing or transmitting  
7 the fingerprint images and related information, shall not exceed  
8 thirty-two dollars (\$32) per submission.

9 (C) An applicant or certificate holder who may be disqualified  
10 on the basis of a criminal conviction shall provide the department  
11 with a certified copy of the judgment of each conviction. In  
12 addition, the individual may, during a period of two years after  
13 the department receives the criminal record report, provide the  
14 department with evidence of good character and rehabilitation in  
15 accordance with subdivision (b) of Section 1337.9. Upon receipt  
16 of a new application for certification of the individual, the  
17 department may receive and consider the evidence during the  
18 two-year period without requiring additional fingerprint imaging  
19 to clear the individual.

20 (D) The department's Licensing and Certification Program shall  
21 explore and implement methods for maximizing its efficiency in  
22 processing criminal record clearances within the requirements of  
23 law, including a streamlined clearance process for persons who  
24 have been disqualified on the basis of criminal ~~convictions~~.  
25 *convictions*.

26 (2) (A) Upon enrollment in a training program for nurse  
27 assistant certification, and prior to direct contact with residents, a  
28 candidate for training shall submit a training and examination  
29 application and the fingerprint cards to the state department to  
30 receive a criminal record review through the Department of Justice.  
31 Submission of the fingerprints to the Federal Bureau of  
32 Investigation shall be at the discretion of the state department.

33 (B) An applicant and any other person specified in this  
34 subdivision, as part of the background clearance process, shall  
35 provide information as to whether or not the person has any prior  
36 criminal convictions, has had any arrests within the past 12-month  
37 period, or has any active arrests, and shall certify that, to the best  
38 of his or her knowledge, the information provided is true. This  
39 requirement is not intended to duplicate existing requirements for  
40 individuals who are required to submit fingerprint images as part

1 of a criminal background clearance process. Every applicant shall  
2 provide information on any prior administrative action taken  
3 against him or her by any federal, state, or local government agency  
4 and shall certify that, to the best of his or her knowledge, the  
5 information provided is true. An applicant or other person required  
6 to provide information pursuant to this section that knowingly or  
7 willfully makes false statements, representations, or omissions  
8 may be subject to administrative action, including, but not limited  
9 to, denial of his or her application or exemption or revocation of  
10 any exemption previously granted.

11 (3) Each health facility that operates and is used as a clinical  
12 skills site for certification training, and each health facility, prior  
13 to hiring a nurse assistant applicant certified in another state or  
14 country, shall arrange for and pay the cost of the fingerprint live  
15 scan service and the Department of Justice processing costs for  
16 each applicant. Health facilities may not pass these costs through  
17 to nurse assistant applicants unless allowed by federal law enacted  
18 subsequent to the effective date of this paragraph.

19 (b) The use of fingerprint live scan technology implemented by  
20 the Department of Justice by the year 1999 shall be used by the  
21 Department of Justice to generate timely and accurate positive  
22 fingerprint identification prior to nurse assistant certification and  
23 prior to direct contact with residents by the nurse assistant  
24 applicant. The department shall explore options to work with  
25 private and governmental agencies to ensure that licensees have  
26 adequate access to electronic transmission sites, including requiring  
27 the department to maintain a contract for electronic transmission  
28 services in each of the district offices where facilities have  
29 indicated problems with timely access to electronic transmission  
30 sites or consistent delays of more than three business days in  
31 obtaining appointments for electronic transmission services through  
32 a private entity, government agency, or law enforcement agency.

33 (c) The state department shall develop procedures to ensure that  
34 any licensee, direct care staff, or certificate holder for whom a  
35 criminal record has been obtained pursuant to this section or  
36 Section 1265.5 or 1736 shall not be required to obtain multiple  
37 criminal record clearances.

38 (d) If the department is experiencing a delay in processing the  
39 renewal of the certified nursing assistant's certification at the time  
40 of the expiration of the certified nursing assistant's certification,



1 the department may extend the expiration of the certified nursing  
2 assistant's certification for six months.

3 (e) If, at any time, the department determines that it does not  
4 meet the standards specified in clauses (i) and (ii) of subparagraph  
5 (A) of paragraph (1) of subdivision (a), for a period of 90  
6 consecutive days, the requirements in paragraph (1) of subdivision  
7 (a) shall be inoperative until the department can demonstrate it has  
8 met those standards for a period of 90 consecutive days.

9 (f) During any time in which the requirements of paragraph (1)  
10 of subdivision (a) are inoperative, facilities may allow newly hired  
11 nurse assistants to have direct contact with clients or residents of  
12 the facility after those persons have submitted live scan fingerprint  
13 images to the Department of Justice, and the department shall issue  
14 an AFL advising facilities of this change in the statutory  
15 requirements.

16 (g) Notwithstanding any other law, the department is authorized  
17 to provide an individual with a copy of his or her state or federal  
18 level criminal offender record information search response as  
19 provided to that department by the Department of Justice if the  
20 department has denied a criminal background clearance based on  
21 this information and the individual makes a written request to the  
22 department for a copy specifying an address to which it is to be  
23 sent. The state or federal level criminal offender record information  
24 search response shall not be modified or altered from its form or  
25 content as provided by the Department of Justice and shall be  
26 provided to the address specified by the individual in their written  
27 request. The department shall retain a copy of the individual's  
28 written request and the response and date provided.